

## GENERAL PROVISIONS

The following clauses apply to this contract

- A. Governmental Immunity. Notwithstanding any other provision to the contrary, no term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection or other provisions of the Colorado Governmental Immunity Act, Section 24-10-101 et. seq., CRS, as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of Section 24-10-101 et. seq., CRS and the risk management statutes, Section 24-30-1501, et. seq., CRS as now or hereafter amended. Any liability of the State created under any other provision of this contract, whether or not incorporated herein by reference, shall be controlled by, limited to, and otherwise modified so as to conform with, the above cited laws.
- B. Federal Funds Contingency. Payment pursuant to this contract, if in federal funds, whether in whole or in part, is subject to and contingent upon the continuing availability of federal funds for the purposes hereof. In the event that said funds, or any part thereof, become unavailable, as determined by the State, the State may immediately terminate this contract or amend it accordingly without liability including liability for termination costs.
- C. Billing Procedures. The State shall establish billing procedures and requirements for payment due the Contractor in providing performance pursuant to this contract. The Contractor shall comply with the established billing procedures and requirements for submission of billing statements. The State shall comply with CRS 24-30-202(24) when paying vendors upon receipt of a correct notice of the amount due for goods or services provided hereunder.
- D. Exhibits - Interpretation. Unless otherwise stated, all referenced exhibits are incorporated herein and made a part of this contract. And, unless otherwise stated, in the event of conflicts or inconsistencies between this contract and its exhibits or attachments, such conflicts shall be resolved by reference to the documents in the following order of priority: 1) the Special Provisions of this contract shall always be controlling over other provisions in the contract or amendments; 2) pages 1 and 2 of the contract ("cover" pages); 3) the exhibits to this contract 4) the General Provisions of this contract.
- E. Notice and Representatives. For the purposes of this contract, the representative for each party is as designated herein. Any notice required or permitted may be delivered in person or sent by registered or certified mail, return receipt requested, to the party at the address provided, and if sent by mail it is effective when posted in a U.S. Mail Depository with sufficient postage attached thereto. Notice of change of address or change of representative shall be treated as any other notice.
- F. Contractor Representations- Qualifications/ Licenses/ Approvals/ Insurance. The Contractor certifies that, at the time of entering into this contract, it and its agents have currently in effect all necessary licenses, certifications, approvals, insurance, etc.

required to properly provide the services and/or supplies covered by this contract in the state of Colorado. Proof of such licenses, certifications, approvals, insurance, etc. shall be provided upon the State's request. Any revocation, withdrawal or nonrenewal of necessary license, certification, approval, insurance, etc. required for the Contractor to properly perform this contract, shall be grounds for termination of this contract by the State.

Contractor certifies that it is qualified to perform such services or provide such deliverables as delineated in this contract.

The Contractor certifies to the best of its knowledge and belief that the Contractor, its principals and authorized subcontractors are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This paragraph applies if payments to the Contractor under this contract in federal funds equal \$100,000 or more.

- G. Legal Authority. The Contractor warrants that it possesses the legal authority to enter into this contract and that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this contract and bind the Contractor to its terms. The person(s) executing this contract on behalf of the Contractor warrant(s) that such person(s) have full authorization to execute this contract.
- H. Insurance - Contractor. The contractor shall obtain, and maintain at all times during the term of this contract, insurance in the following kinds and amounts:
1. Workers' Compensation Insurance as required by state statute, and Employer's Liability Insurance covering all of contractor's employees acting within the course and scope of their employment.
  2. Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:
    - a. \$1,000,000 each occurrence;
    - b. \$1,000,000 general aggregate;
    - c. \$1,000,000 products and completed operations aggregate; and
    - d. \$50,000 any one fire.If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, the contractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the State a certificate or other document satisfactory to the State showing compliance with this provision.
  3. Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit as follows: \$1,000,000 each accident combined single limit.
  4. Professional Liability Insurance with minimum limits of liability of not less than \$1,000,000.

5. Additional Insured. The State of Colorado shall be named as additional insured on the Commercial General Liability and Automobile Liability Insurance policies (leases and construction contracts will require the additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent). Coverage required of the contract will be primary over any insurance or self-insurance program carried by the State of Colorado.
  6. Cancellation. The Insurance shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the State by certified mail.
  7. Subrogation. The contractor will require all insurance policies in any way related to the contract and secured and maintained by the contractor to include clauses stating that each carrier will waive all rights of recovery, under subrogation or otherwise, against the State of Colorado, its agencies, institutions, organizations, officers, agents, employees and volunteers.
  8. Companies Satisfactory to the State. All policies evidencing the insurance coverages required hereunder shall be issued by insurance companies satisfactory to the State.
  9. Certificates of Insurance. The contractor shall provide certificates showing insurance coverage required by this contract to the State within 7 business days of the effective date of the contract, but in no event later than the commencement of the services or delivery of the goods under the contract. No later than 15 days prior to the expiration date of any such coverage, the contractor shall deliver the State certificates of insurance evidencing renewals thereof. At any time during the term of this contract, the State may request in writing, and the contractor shall thereupon within 10 days supply to the State, evidence satisfactory to the State of compliance with the provisions of this section.
  10. "Public Entity". Notwithstanding subsection A of this section, if the contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act CRS 24-10-101, *et seq.*, as amended ("Act"), the contractor shall at all times during the term of this contract maintain only such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Act. Upon request by the State, the contractor shall show proof of such insurance satisfactory to the State.
- I. Rights in Data, Documents and Computer Software or Other Intellectual Property. All intellectual property including without limitation, databases, software, documents, research, programs and codes, as well as all, reports, studies, data, photographs, negatives or other documents, drawings or materials prepared by the contractor in the performance of its obligations under this contract shall be the exclusive property of the State. Unless otherwise stated, the contractor upon completion, termination, or cancellation of this contract shall deliver all such materials to the State. Contractor shall not use, willingly allow or cause to have such materials used for any purpose other than the performance of the contractor's obligations under this contract without a prior written consent of the State. All documentation, accompanying the intellectual property or otherwise, shall comply with the State requirements which include but is not limited to all documentation being in a paper, human readable format which is useable by one who is reasonably proficient in the given subject area. . Contractor shall deliver software documentation to the State that clearly

identifies the programming language and version used, and when different programming languages are incorporated, identifies the interfaces between code programmed in different programming languages. The documentation shall contain source code that describes the program logic, relationship between any internal functions, and identifies the disk files that contain the various parts of the code. Files containing the source code shall be delivered and their significance to the program described in the documentation. The documentation shall describe error messages and the location in the source code, by page, line number, or other suitable identifier, where the error message is generated. The Contractor warrants that the delivered software will be sufficiently descriptive to enable maintenance and modification of the software. The State's ownership rights described herein shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works.

- J. Proprietary Information. Confidentiality. Subject to the Public (Open) Records Act, C.R.S. §§ 24-72-101, *et seq.*, as amended, if the Contractor obtains access to any records, files, or other information of the State in connection with, or during the performance of, this Contract, then the Contractor shall keep all such records, files, or other information confidential and shall comply with all laws and regulations concerning the confidentiality of all such records, files, or information to the same extent as such laws and regulations apply to the State. Any breach of confidentiality by the Contractor, or third party agents of the Contractor, shall constitute good cause for the State to cancel this Contract, without liability to the State. Any State waiver of an alleged breach of confidentiality by the Contractor, or third party agents of the Contractor, does not constitute a waiver of any subsequent breach by the Contractor, or third party agents of the Contractor. Contractor shall protect the confidentiality of all information used, held, created or received in connection with this Contract and shall insure that any subcontractors or agents of Contractor protect the confidentiality of all information under this Contract. Contractor shall use and disclose confidential information only for purposes of this Contract and for the operation and administration of the Contractor. Contractor shall implement appropriate safeguards as are necessary to prevent the use of disclosure of confidential information and shall maintain a comprehensive written information privacy and security program that includes administrative, technical and physical safeguards for the electronic transmission of confidential information which are appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities. Contractor shall promptly notify the State if Contractor breaches the confidentiality of any information covered by this Contract.

Identify Confidential Information. The Contractor must identify to the State the information that it considers confidential or proprietary. This is a continuing obligation. Confidential or proprietary information for the purpose of this paragraph is information relating to Contractor's research, development, trade secrets, business affairs, internal operations and management procedures and those of its customers, clients or affiliates, but does not include information lawfully obtained by third parties, information which is in the public domain, or information which is or could have been acquired/developed independently by the State or a third party. Notwithstanding the foregoing, the State shall not be in violation of its obligations under this section should it disclose confidential information if such disclosure is, in the sole

opinion of the State's legal counsel, required by applicable law and/or legal process (including, but not limited to, disclosures required pursuant to the Colorado (Open) Public Records Act, C.R.S. §§ 24-72-201, *et. seq.*, as now or hereafter amended). The State shall endeavor to provide notice to the Contractor, as promptly as practicable under the circumstances, of any demand, request, subpoena, court order or other action requiring such disclosure, in order to afford Contractor the opportunity to take such lawful action as it deems appropriate to oppose, prevent or limit the disclosure, solely at its own instance and expense; but nothing herein shall be construed to require the State to refuse or delay compliance with any such law, order or demand.

- K. Records Maintenance, Performance Monitoring & Audits: Complete File. The Contractor shall maintain a complete file of all records, documents, communications, and other materials that pertain to the operation of the program/project or the delivery of services under this contract. Such files shall be sufficient to properly reflect all direct and indirect costs of labor, materials, equipment, supplies and services, and other costs of whatever nature for which a contract payment was made. These records shall be maintained according to generally accepted accounting principles and shall be easily separable from other Contractor records.

Protect Confidentiality. The Contractor shall protect the confidentiality of all records and other materials containing personally identifying information that are maintained in accordance with this contract. Except as provided by law, no information in possession of the Contractor about any individual constituent shall be disclosed in a form including identifying information without the prior written consent of the person in interest, a minor's parent, guardian, or the State. The Contractor shall have written policies governing access to, duplication and dissemination of, all such information and advise its agents, if any, that they are subject to these confidentiality requirements. The Contractor shall provide its agents, if any, with a copy or written explanation of these confidentiality requirements before access to confidential data is permitted.

Audits and/or Inspections. The Contractor authorizes the State, the federal government or their designee, to perform audits and/or inspections of its records, at any reasonable time, to assure compliance with the state or federal government's terms and/or to evaluate the Contractor's performance. Any amounts the State paid improperly shall be immediately returned to the State or may be recovered in accordance with other remedies.

Property of the State. All such records, documents, communications, and other materials shall be the property of the State unless otherwise specified herein and shall be maintained by the Contractor, for a period of six (6) years from the date of final payment or submission of the final federal expenditure report under this contract, unless the State requests that the records be retained for a longer period, or until an audit has been completed with the following qualification. If an audit by or on behalf of the federal and/or state government has begun but is not completed at the end of the six (6) year period, or if audit findings have not been resolved after a six (6) year period, the materials shall be retained until the resolution of the audit findings.

Monitoring. The Contractor shall permit the State, any other governmental agency authorized by law, or an authorized designee thereof, in its sole discretion, to monitor all activities

conducted by the Contractor pursuant to the terms of this contract. Monitoring may consist of internal evaluation procedures, reexamination of program data, special analyses, on-site verification, formal audit examinations, or any other procedures as deemed reasonable and relevant. All such monitoring shall be performed in a manner that will not unduly interfere with contract work.

- L. Taxes. The State, as purchaser, is exempt from all federal excise taxes under Chapter 32 of the Internal Revenue Code [No. 84-730123K] and from all state and local government use taxes [C.R.S. §§ 39-26-114(a) and 203, as amended]. The contractor is hereby notified that when materials are purchased for the benefit of the State, such exemptions apply except that in certain political subdivisions the vendor may be required to pay sales or use taxes even though the ultimate product or service is provided to the State. These sales or use taxes will not be reimbursed by the State.
- M. Conflict of Interest. Conflict. During the term of this contract, the Contractor shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the Contractor fully performing his/her obligations under this contract.

Appearance of Conflict. Additionally, the Contractor acknowledges that, in governmental contracting, even the appearance of a conflict of interest is harmful to the interests of the State. Thus, the Contractor agrees to refrain from any practices, activities or relationships that could reasonably be considered to be in conflict with the Contractor's fully performing his/her obligations to the State under the terms of this contract, without the prior written approval of the State.

Full Disclosure Statement. In the event that the Contractor is uncertain whether the appearance of a conflict of interest may reasonably exist, the Contractor shall submit to the State a full disclosure statement setting forth the relevant details for the State's consideration and direction. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict shall be grounds for termination of the contract.

Code of Standards. Further, the Contractor shall maintain a written code of standards governing the performance of its agent(s) engaged in the award and administration of contracts.

No Participation Where Conflict. Neither the Contractor nor its agent(s) shall participate in the selection, or in the award or administration of a contract or subcontract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

1. The employee, officer or agent;
2. Any member of the employee's immediate family;
3. The employee's partner; or
4. An organization which employees, or is about to employ, any of the above,

has a financial or other interest in the firm selected for award.

Gratuities. Neither the Contractor nor its agent(s) will solicit nor accept gratuities, favors, or anything of monetary value from Contractor's potential contractors, or parties to sub-agreements.

N. Conformance with Law. The Contractor and its agent(s) shall at all times during the term of this contract strictly adhere to all applicable federal laws, state laws, Executive Orders and implementing regulations as they currently exist and may hereafter be amended. Without limitation, these federal laws and regulations include:

- Age Discrimination Act of 1975, 42 U.S.C. Section 6101 et seq. and its implementing regulation, 45 C.F.R. Part 91;
- Age Discrimination in Employment Act of 1967, 29 U.S.C. 621 et seq.;
- Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 et seq.;
- The Drug Free Workplace Act of 1988, 41 U.S.C. 701 et seq.;
- Equal Pay Act of 1963, 29 U.S.C. 206;
- Immigration Reform and Control Act of 1986, 8 U.S.C. 1324b;
- Pro-Children Act of 1994, 20 U.S.C. 6081 et seq.;
- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended, and implementing regulation 45 C.F.R. Part 84;
- Titles VI & VII of the Civil Rights Act of 1964, 42 U.S.C. 2000(d) & (e);
- The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 USC 604a, PL 104-193. See also State Executive Order D 015 00;
- Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq.;
- The Common Rule found under the regulations for the U.S. Department of Health and Human Services, at 45 Code of Federal Regulations, Part 92;
- Office of Management and Budget Circulars A-87, A-21, A-122, A-102, and A-110, as applicable;
- The Hatch Act (5 USC 1501-1508) and Civil Service Reform Act, Public Law 95-454 Section 4728;
- Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriations Act, 1990, PL 101-166, Section 511. These federal statutes declare that federal funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federally-assisted programs; and
- 45 CFR Subtitle A, Department of Health and Human Services regulations.

O. Discrimination. The Contractor during the performance of this contract shall:

1. not discriminate against any person on the basis of race, color, national origin, age, sex, religion and handicap, including Acquired Immune Deficiency Syndrome (AIDS) or AIDS related conditions.
2. not exclude from participation in, or deny benefits to any qualified individual with a disability, by reason of such disability.

Any person who thinks he/she has been discriminated against as related to the performance of this contract has the right to assert a claim, Colorado Civil Rights Division, C.R.S. §§ 24-34-302, *et seq.*

P. Criminal Background Check. Pursuant to C.R.S. §27-1-110 and Department of Human Services Policy VI-2.4, any independent contractor, and its agent(s), who is designated by the Executive Director or the Executive Director's designee to be a contracting employee under C.R.S. §27-1-110, who has direct contact with vulnerable persons in a state-operated facility, or who provides

state-funded services that involve direct contact with vulnerable persons in the vulnerable person's home or residence, shall:

1. submit to a criminal background check, and
2. report any arrests, charges, or summonses for any disqualifying offense as specified by C.R.S. §27-1-110 to the State.

Any Contractor or its agent(s), who does not comply with C.R.S. §27-1-110 and DHS Policy VI-2.4, may, at the sole discretion of the State, be suspended or terminated.

Q. Litigation. The Contractor shall within five (5) calendar days after being served with a summons, complaint, or other pleading which has been filed in any federal or state court or administrative agency notify the State that it is a party defendant in a case which involves services provided under this contract. The Contractor shall deliver copies of such document(s) to the State's Executive Director. The term "litigation" includes an assignment for the benefit of creditors, and filings in bankruptcy, reorganization and/or foreclosure.

R. Inspection and Acceptance (Services). The State reserves the right to inspect services provided under this contract at all reasonable times and places during the term of the contract. "Services" as used in this clause includes services performed or tangible material produced or delivered in the performance of services. If any of the services do not conform with contract requirements, the State may require the contractor to perform the services again in conformity with contract requirements, with no additional payment. When defects in the quality or quantity of service cannot be corrected by re-performance, the State may (1) require the contractor to take necessary action to ensure that the future performance conforms to contract requirements and (2) equitably reduce the payment due the contractor to reflect the reduced value of the services performed. These remedies in no way limit the remedies available to the State in the termination provisions of this contract, or remedies otherwise available at law.

S. Notice of Breach and Dispute Resolution. Notice of Breach. If the State or the Contractor believes in good faith that the other party has failed to timely complete a deliverable, or has otherwise committed a material breach of this Contract, then the non-breaching party shall notify the breaching party in writing of the alleged breach within ten (10) business days of: 1) the date of the alleged breach if the non-breaching party is aware of the breach at the time it occurs; or 2) the date that the non-breaching party becomes aware of the breach.

Cure. Upon receipt of written notice of an alleged breach of the Contract, the breaching party shall have ten (10) business days, or such additional time as may be agreed to in writing between the parties, within which to cure the alleged breach or to notify the non-breaching party in writing of the breaching party's belief that a material breach of this Contract has not occurred. Failure of the breaching party to cure or respond in writing within the above time period shall result in the non-breaching party being entitled to pursue any and all remedies available at law or in equity.

Dispute Resolution. Except as herein specifically provided otherwise, disputes concerning the performance of this contract which cannot be resolved by the designated contract representatives shall be referred in writing to a senior departmental management staff designated by the department and a senior manager designated by the Contractor. Failing

resolution at that level, disputes shall be presented in writing to the Executive Director and the Contractor's chief executive officer for resolution. This process is not intended to supersede any other process for the resolution of controversies provided by law.

Continued Liability and Substituted Performance. The Contractor and its sureties shall be liable for any damage to the State resulting from the Contractor's breach, whether or not the Contractor's right to proceed with the work is terminated. The State reserves the right, in its sole discretion, to determine whether or not to accept substituted performance tendered by the Contractor or the Contractor's sureties and acceptance is dependent upon completion of all applicable inspection procedures.

T. Remedies. In addition to any other remedies provided for in this contract, and without limiting its remedies otherwise available at law, the State may exercise the following remedial actions if the Contractor substantially fails to satisfy or perform the duties and obligations in this contract. Substantial failure to satisfy the duties and obligations shall be defined to mean significant insufficient, incorrect or improper performance, activities, or inaction by the Contractor. Without limitation, these remedial actions include:

1. withhold payment to Contractor until the necessary services or corrections in performance are satisfactorily completed; and/or
2. require the vendor to take necessary action to ensure that the future performance conforms to contract requirements; and/or
3. request the removal from work on the contract of employees or agents of Contractor whom the State justifies as being incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued employment on the contract the State deems to be contrary to the public interest or not in the best interest of the State; and/or
4. deny payment for those services or obligations which have not been performed and which due to circumstances caused by Contractor cannot be performed, or if performed would be of no value to the State; denial of the amount of payment must be reasonably related to the value of work or performance lost to the State; and/or
5. suspend Contractor's performance pending necessary corrective action as specified by the to adjustment in price/cost or schedule; and/or
6. modify or recover payments (from payments under this contract or other contracts between the State and the vendor as a debt due to the State) to correct an error due to omission, error, fraud and/or defalcation; and/or
7. terminate the contract for default.

These remedies in no way limit the remedies available to the State in the termination provisions of this contract, or remedies otherwise available at law.

U. Termination.

1. Termination for Default. 'The State may terminate the contract for cause. In the event this contract is terminated for cause, the State will only reimburse the Contractor for accepted work or deliverables received up to the date of termination. In the event this contract is terminated for cause, final payment to the Contractor may be withheld at the discretion of the State until completion of final audit.

Notwithstanding the above, the Contractor shall not be relieved of liability to the State for any damages sustained by the State by virtue of any breach of the contract by the Contractor, and the State may withhold any payment to the Contractor for the purposes of mitigating its damages until such time as the exact amount of damages due to the State from the Contractor is determined. If it is determined that the Contractor was not in default then such termination shall be treated as a termination for convenience as described herein. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the contractor under this contract shall, at the option of the State, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any services and supplies delivered and accepted. The Contractor shall be obligated to return any payment advanced under the provisions of this contract.

2. Termination for Convenience. The State shall have the right to terminate this contract by giving the Contractor at least twenty (20) days prior written notice. If notice is so given, this contract shall terminate on the expiration of the specified time period, and the liability of the parties hereunder for further performance of the terms of this contract shall thereupon cease, but the parties shall not be released from the duty to perform their obligations up to the date of termination. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the contractor under this contract shall, at the option of the State, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory services and supplies delivered.
3. Immediate Termination. This contract is subject to immediate termination by the State in the event that the State determines that the health, safety, or welfare of persons receiving services may be in jeopardy. Additionally, the State may immediately terminate this contract upon verifying that the Contractor has engaged in or is about to participate in fraudulent or other illegal acts.
4. Termination for Financial Exigency. The State shall have the right to terminate this contract for financial exigency by giving the Contractor at least thirty (30) days prior written notice. For the purposes of this provision, a financial exigency shall be a determination made by the Colorado legislature or its Joint Budget Committee that the financial circumstances of the State are such that it is in the best interest of the State to terminate this contract. If notice of such termination is so given, this contract shall terminate on the expiration of the time period specified in the notice, and the liability of the parties hereunder for further performance of the terms of this contract shall thereupon cease, but the parties shall not be released from the duty to perform their obligations up to the date of termination.
5. Termination Claim. In the event that the State terminates this contract under the Termination for Convenience or Termination for Financial Exigency provisions, the Contractor is entitled to submit a termination claim within ten (10) days of the effective date of termination. The termination claim shall address and the State shall consider paying the following costs:

- a. the contract price for performance of work, which is accepted by the State, up to the effective date of the termination.
- b. reasonable and necessary costs incurred in preparing to perform the terminated portion of the contract
- c. reasonable profit on the completed but undelivered work up to the date of termination
- d. the costs of settling claims arising out of the termination of subcontracts or orders, not to exceed 30 days pay for each subcontractor
- e. reasonable accounting, legal, clerical, and other costs arising out of the termination settlement.

In no event shall reimbursement under this clause exceed the contract amount reduced by amounts previously paid by the State to the Contractor.

V. Venue. The parties agree that venue for any action related to performance of this contract shall be in the City and County of Denver, Colorado.

W. Understanding of the Parties.

1. Complete Integration. This contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendment executed and approved pursuant to the State Fiscal Rules.
2. Severability. To the extent that this contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of this contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.
3. Binding Agreement. Except as herein specifically provided otherwise, it is expressly understood and agreed that this contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. All rights of action relating to enforcement of the terms and conditions shall be strictly reserved to the State and the named Contractor. Nothing contained in this agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the State and the Contractor that any such person or entity, other than the State or the Contractor, receiving services or benefits under this agreement shall be deemed an incidental beneficiary only.
4. Waiver. The waiver of any breach of a term hereof shall not be construed as a waiver of any other term, or the same term upon subsequent breach.
5. Continuing Obligations. The State and the Contractor's obligations under this contract shall survive following termination or expiration to the extent necessary to give effect to the intent and understanding of the parties.
6. Assignment and Change In Ownership, Address, Financial Status. Except as herein specifically provided otherwise, the rights, duties and obligations of the Contractor arising hereunder cannot be assigned, delegated, sub-granted or subcontracted except with the express prior written consent of the State, which consent shall not be unreasonably withheld. In the case of assignment or delegation,

Contractor and the State shall execute the standard State assignment/novation agreement prior to the assignment or delegation being effective against the State. The subgrants and subcontracts permitted by the State shall be subject to the requirements of this contract. The Contractor is responsible for all subcontracting arrangements, delivery of services, and performance of any subgrantor or subcontractor. The Contractor warrants and agrees that any subgrant or subcontract, resulting from its performance under the terms and conditions of this contract, shall include a provision that the said subgrantor or subcontractor shall abide by the terms and conditions hereof. Also, the Contractor warrants and agrees that all subgrants or subcontracts shall include a provision that the subgrantor or subcontractor shall indemnify and hold harmless the State. The subgrants or subcontractors must be certified to work on any equipment for which their services are obtained.

This provision shall not be construed to prohibit assignments of the right to payment to the extent permitted by section 4-9-318, CRS, provided that written the controller for the agency, department, or institution executing this contract receives notice of assignment adequate to identify the rights assigned. Such assignment shall not be deemed valid until receipt by such controller – as distinguished from the State Controller – and the Contractor assumes the risk of such written notice of assignment being received by the controller for the agency, department, or institution involved.

7. Notification. The Contractor is required to formally notify the State prior to, or if circumstances do not allow prior notification then immediately following, any of the following:
  - a. change in ownership;
  - b. change of address;
  - c. the filing of bankruptcy.

X. Force Majeure. Neither the Contractor nor the State shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this contract, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by “force majeure.” As used in this contract “force majeure” means acts of God; acts of the public enemy; public health/safety emergency acts of the State and any governmental entity in its sovereign capacity; fires; floods, epidemics; quarantine restrictions, strikes or other labor disputes; freight embargoes; or unusually severe weather.

Y. Contractor Affirmation. If this Contract involves federal funds or compliance is otherwise federally mandated, then by signing and submitting this Contract the Contractor affirmatively avers that:

1. The Contractor is in compliance with the requirements of the “Drug-Free Workplace Act” (Public Law 100-690 Title V, Subtitle D, 41 U.S.C. 701 et seq.);
2. The Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency; the Contractor shall to comply with all applicable regulations pursuant to Executive Order 12549, including, Debarment and Suspension and Participants’ Responsibilities, 29 C.F.R. 98.510 (1990); and,

3. The Contractor shall comply with all applicable regulations pursuant to Section 319 of Public Law 101-121, Guidance for New Restrictions on Lobbying, including, Certification and Disclosure, 29 C.F.R. 93.110(1990).

Z. Annual Audits. If the Contractor expends federal funds from all sources (direct or from pass-through entities) in an amount of \$500,000 or more during its fiscal year, then the Contractor shall have an audit of that fiscal year in accordance with Office of Management and Budget (OMB) Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations). If the Contractor expends federal funds received from the State in an amount of \$500,000 or more during its fiscal year, then the Contractor shall furnish one (1) copy of the audit report(s) to the State's Internal Audit Office within thirty (30) calendar days after the Contractor's receipt of its auditor's report or nine (9) months after the end of the Contractor's audit period, whichever is earlier. If (an) instance(s) of noncompliance with federal laws and regulations occurs, then the Contractor shall take all appropriate corrective action(s) within six (6) months of the issuance of (a) report(s).

If the Contractor submits an annual indirect cost proposal to the State for review and approval, then the Contractor's auditor shall audit the proposal in accordance with the requirements of OMB Circulars A-21 (Cost Principles for Educational Institutions), A-87 (Cost Principles for State, Local, and Tribal Governments), or A-122 (Cost Principles for Non-Profit Organizations), whichever is applicable.

AA. Holdover. In the event that the State desires to continue the services provided for in this Contract and a replacement contract has not been fully executed by the expiration date of the Contract, this Contract may be extended unilaterally by the State for a period of up to two (2) months upon written notice to the Contractor under the same terms and conditions of the original Contract including, but not limited to, prices, rates, and service delivery requirements. However, this extension terminates when the replacement contract becomes effective when signed by the State Controller or an authorized delegate.

BB. HIPAA. If the Contractor is a covered entity under the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d - 1320d-8 (HIPAA), the Contractor shall comply with applicable HIPAA requirements. Further if this contract has attached as one of its exhibits a HIPAA Business Associates Addendum, the parties understand and agree that federal law and regulations governing the privacy of certain health information require such "Business Associate Contract" between the State and the Contractor. 45 C.F.R. Section 164.504(e). Such exhibit, if at all, is attached and incorporated herein by reference and agreed to by the parties as a HIPAA Business Associate Addendum for HIPAA compliance. The terms of the Addendum shall be considered binding upon execution of this contract and shall remain in effect during the term of the contract including any extensions.

CC. Change Order Letter. If this contract has attached as one of its exhibits a sample change order letter, bilateral changes within the general scope of the contract, as defined in the Scope of Work at Page 1 above, may be executed using the change order letter process described in this paragraph and a form substantially equivalent to the sample change order letter attached, if at all, as an exhibit for any of the following reasons.

1. Where the agreed changes to the specifications result in an adjustment to the price, delivery schedule, or time of

performance. Where the agreed changes result in no adjustment to the price, delivery schedule, or time of performance. The change order shall contain a mutual release of claims for adjustment of price, schedules, or time of performance.

2. Where the changes to the contract are priced based on the unit prices to be paid for the goods and/or services established in the contract.
3. Where the changes to the contract are priced based on established catalog generally extended to the public or on rates set by law or regulation.

Other bilateral modifications not within the terms of this paragraph must be executed by formal amendment to the contract, approved in accordance with state law.

DD. Option Letter. If this contract has attached as one of its exhibits a sample option letter including option to renew as one of its purposes, the state may require continued performance for a period of one year for any services at the rates and terms specified in the contract. The state may exercise the option by written notice to the contractor within 60 days prior to the end of the current contract term in a form substantially equivalent to the sample option letter attached to this contract, if at all, as an exhibit.

If the state exercises this option, the extended contract will be considered to include this option provision. The total duration of this contract, including the exercise of any options under this clause, shall not exceed five years.

Further, If this contract has attached as one of its exhibits a sample option letter including option for level of service change, the state may unilaterally increase/decrease the maximum amount payable under this contract based upon the unit prices established in the contract and the schedule of services required, as set by the state. The state may exercise the option by providing a fully executed option to the contractor, in a form substantially equivalent to the sample option letter attached to this contract, if at all, as an exhibit, immediately upon signature of the State Controller or his delegate. Performance of the service shall continue at the same rate and under the same terms as established in the contract.

EE. Funding Letter. If this contract has attached as one of its exhibits a sample funding letter, the state may allocate more or less funds available on this contract using a funding letter substantially equivalent to the sample funding letter attached to this contract, if at all, as an exhibit, and bearing the approval of the State Controller or his designee. The funding letter shall not be deemed valid until it shall have been approved by the State Controller or his designee.

FF. Corrections. The parties understand and acknowledge that after this contract is signed by the parties, but before it is signed and approved by the State Attorney General's Office (AG) and the State Controller (SCO), it may be necessary and/or advisable during the review process leading up to said approval by the AG and SCO for the Department's Contract Management Unit (Cmgt.) to make various non-substantive only, hand-written corrections/clarifications to the contract. The parties hereby approve and accept any such corrections/clarifications made to the contract. By way of example, such corrections/clarifications may include adding or correcting page numbering, adding or correcting labeling of exhibits and attachments, correcting obvious typographical errors (including

by use of white-out), adding the contractor's FEIN number to the contractor's signature block, and the like. In making such corrections/clarifications, Cmgmt. staff shall act in a fiduciary capacity and have a fiduciary obligation to make only non-substantive corrections/clarifications that do not in any manner or way materially effect the stated terms and conditions of the contract. A Cmgmt. staff member shall initial all such corrections/clarifications along with the notation "Cmgmt".

GG. Limitation of State's Liability. The State's liability hereunder to the Contractor in all events shall be limited to direct damages, and the State shall not be liable for any incidental, indirect, special, punitive or consequential damages, including without limitation, any lost profits, lost goodwill or lost business.